

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROBERT SPENCER,)	CASE NO. 1:18-cv-1764
)	
Plaintiff,)	
)	JUDGE DONALD C. NUGENT
v.)	
)	
KENNETH FALZINI, <i>et al.</i> ,)	MOTION OF DEFENDANTS FOR
)	EXTENSION OF TIME IN WHICH TO
Defendants.)	PLEAD OR MOVE IN RESPONSE TO
)	PLAINTIFF'S COMPLAINT AND FOR
)	LEAVE TO EXCEED PAGE
)	LIMITATION FOR DISPOSITIVE
)	MOTIONS IN UNASSIGNED CASES

Defendants Kenneth Falzini, David Simia, Kevin Price, Matthew Berdysz, and the City of Garfield Heights, by and through undersigned counsel, respectfully move this honorable Court for an order granting Defendants a modest one-week extension of time to plead or move in response to the Complaint of Plaintiff Robert Spencer, as well as for leave to file a memorandum in support of their anticipated motion under Fed. R. Civ. P. 12 that is not longer than thirty (30) pages in length.

For cause, Defendants state that they received waivers of service from Plaintiff's counsel on August 10, 2018 and executed the same on August 13, 2018. By operation of Fed. R. Civ. P. 4(d)(3), Defendants' answer or Fed. R. Civ. P. 12 motion is presently due by October 9, 2018. In addition to preparing their response to Plaintiff's Complaint, Defendants are actively engaged in settlement negotiations with Plaintiff. To date, Plaintiff has made an initial settlement demand and Defendants have responded to that demand today with their initial offer. To afford Defendants sufficient time to prepare their response to Plaintiff's Complaint while engaging in

settlement negotiations, Defendants submit that a modest-one-week extension from October 9, 2018 to October 16, 2018 is appropriate.

In the event this case is not resolved prior to the deadline for Defendants to respond to Plaintiff's Complaint, Defendants anticipate filing a motion under Fed. R. Civ. P. 12. Defendants respectfully request leave to file a memorandum in support of this anticipated motion that is not longer than thirty (30) pages in length. For cause, Defendants state that Plaintiff's Complaint is forty-five (45) pages in length, contains three hundred and sixty-three (363) numbered paragraphs, includes over forty (40) footnotes with citations to statutes and caselaw, and asserts twenty-seven (27) claims for relief. Although this Court's Local Rule 7.1(f) provides that "memoranda relating to dispositive motions must not exceed [...] twenty (20) pages for administrative, standard and unassigned cases," Defendants submit that this limitation will prevent them from fully and cogently presenting their anticipated arguments under Fed. R. Civ. P. 12. For example, Defendants presently anticipate moving to dismiss several counts of Plaintiff's Complaint, in addition to asserting an argument in support of a motion for more definite statement under Fed. R. Civ. P. 12(e). Given the length of Plaintiff's complaint and the sheer number of claims asserted, limiting an initial Rule 12 motion to twenty pages (less those pages dedicated to the summary of alleged facts, issues to be decided, and summary of the argument) would prevent Defendants from presenting well-reasoned and properly-supported arguments for this Court's consideration.

Defendants submit that no party will be prejudiced by the relief requested in the instant Motion. If granted, the brief extension of time requested herein would ensure that Defendants have responded to Plaintiff's Complaint prior to the October 22 case management conference. Moreover, Defendants would not oppose a request by Plaintiff to file a brief in opposition to

Defendants' anticipated Fed. R. Civ. P. 12 motion that is commensurate in length with any memorandum filed by Defendants.

Accordingly, and for the reasons stated herein, Defendants respectfully request that this honorable Court enter an order granting Defendants leave to plead or move in response to Plaintiff's Complaint by October 16, 2018, and for leave to file a memorandum not longer than thirty (30) pages in length in support of any motion that Defendants may file pursuant to Fed. R. Civ. P. 12.

Respectfully submitted,

/s/ Daniel J. Rudary

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Counsel for Defendants Kenneth Falzini, David Simia, Kevin Price, Matthew Berdysz, and the City of Garfield Heights

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Daniel J. Rudary
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4843-4441-3045, v. 1